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UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
Northwest Region
7600 Sand Point Way N.E., Bldg. 1
Seattle, WA 98115

NMFS Tracking No.:
2005/03884

August 26, 2005

Michelle Walker
Regulatory Branch Chief
Corps of Engineers, Seattle District
Post Office Box 3755
Seattle, Washington 98124-3755

AUG 31 2005

RE: Endangered Species Act Section 7 Informal Consultation and Magnuson-Stevens Fishery Conservation and Management Act Essential Fish Habitat Consultation for the Asb Grove Cement Company Maintenance Dredge Project, Duwamish Waterway. (King County, Washington) Puget Sound HUC 17110013, COE No.: 200100155

Dear Ms. Walker:

Attention: Suzanne Skadowski

This correspondence is in response to your request for consultation under the Endangered Species Act (ESA). Additionally, this letter serves to meet the requirements for consultation under the Magnuson-Stevens Fishery Conservation and Management Act (MSA section 305(b)).

Endangered Species Act

The Army Corps of Engineers (COE) submitted a Biological Evaluation (BE) to the National Marine Fisheries Service (NMFS) for the above referenced project on July 12, 2005 and requested NMFS' concurrence with U.S. Army Corps of Engineers (COE) determinations that the project would "not likely adversely affect" Puget Sound (PS) Chinook salmon (*Oncorhynchus tshawytscha*) and proposed critical habitat for PS Chinook salmon. This consultation with the COE is conducted under section 7(a)(2) of the ESA, and its implementing regulations, 50 CFR Part 402.

According to the project information provided, the applicant proposes to dredge 600 cubic yards of material spilled during offloading of aggregate materials. The present proposal is the second dredge action of a COE ten-year maintenance permit. During initial consultation with NMFS in 2002, NMFS requested that anti-spillage equipment and Best Management Practices (BMPs) be implemented to prevent future disturbance to aquatic habitat. In our letter of concurrence (November 18, 2002), NMFS also requested that reinitiation of consultation be required should future dredging occur. The applicant's improvement at the time of initial consultation included a larger hopper with skirting, extensions to the conveyor, new covers over the conveyor, and a pre-cleaner and secondary cleaner on the dock conveyor belt. Information received on August 8, 2005 indicated that after the 2003 maintenance dredging, it was determined that the barge-mounted conveyor installed in 2003 was a source of material spillage.



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That new conveyor was constructed to extend further into the dock hopper; however, this conveyor, for a variety of reasons, did not function as designed and was taken out of service. The original conveyor was put back into service and staged on the barge in such a way that it could adequately reach into the new, wider hopper. This improvement was made several months after the first round of dredging, and it is believed that much of the material to be removed in 2005 was deposited during the time between the first dredging and the conveyor improvement.

Following the 2005 dredging, Ash Grove Cement has agreed to check the conveyor skirting on a weekly basis to make sure that it is functioning properly and material is not being spilled before it reaches the dock. The applicant expects that the 2007 bathymetric monitoring survey will show that the rate of spillage has been substantially reduced. Therefore, NMFS expects that future dredging will be unnecessary due to the applicant's commitment to operation BMPs.

Species Determination

PS Chinook use the action area for migration and feeding. NMFS expects the effects of the project to be discountable or insignificant because: (1) the project will be done when juvenile salmon are least likely to be present; (2) the applicant will monitor operations to ensure that aggregate material is not entering the aquatic environment; and (3) Best Management Practices (BMPs) will be employed to avoid construction related effects on aquatic species and their habitat. Therefore, NMFS concurs with your findings of "may affect, not likely to adversely affect" PS Chinook salmon.

Critical Habitat Determination

NMFS proposed critical habitat for the PS Chinook salmon Evolutionary Significant Unit (ESU) on December 14, 2004 (69 FR 74572). The primary constituent elements (PCEs) proposed for the PS Chinook salmon ESU critical habitat in this action area is:

Nearshore marine areas free of obstruction and excessive predation with water quality and quantity conditions and forage, including aquatic invertebrates and fishes, supporting growth and maturation, and natural cover such as submerged and overhanging large wood, aquatic vegetation, etc.

Proposed critical habitat boundaries within the action area for the proposed project include areas contiguous with the shoreline from the line of extreme high water out to a depth of 30 meters relative to Mean Lower Low Water. NMFS analyzed the potential impacts of the project on this PCE and determined that the potential effects will be insignificant and discountable because:

1. The project will not result in a barrier to migration through the marine area. Effects to migratory habitat are expected to be insignificant.
2. The project may cause a short-term change in the characteristics of the subtidal benthic community. Since the material has been recently deposited, is coarse, and contains little organic material it is not ideal for benthic production.

Therefore, the project is not likely to reduce the long term abundance of existing prey species. Benthic production would be expected to improve as future dredging become unnecessary.

3. The proposed project has the potential to remobilize small amounts of fine-grained sediment during construction and alter water quality. However, the effects are expected to be local and temporary and not significantly impact water quality.

Therefore, NMFS concurs with your "may affect, not likely to adversely affect" determination for proposed critical habitat for PS Chinook salmon.

This concludes informal conference pursuant to the regulations implementing the ESA, 50 CFR 402.10. This project should be reanalyzed if new information reveals effects of the action that may affect listed species or critical habitat in a manner or to an extent not considered in this consultation. The project should also be reanalyzed if the action is subsequently modified in a manner that causes an effect to the listed species or critical habitat that was not considered in this consultation, and/or if a new species is listed or critical habitat for another species is designated that may be affected by this project.

Magnuson-Stevens Fishery Conservation and Management Act

Federal agencies are required, under section 305(b)(20) of the Magnuson-Stevens Fishery Conservation and Management Act (MSA) and its implementing regulations (50 CFR 600 Subpart K), to consult with NMFS regarding actions that are authorized, funded, or undertaken by that agency that may adversely affect Essential Fish Habitat (EFH). The MSA (section 3) defines EFH as those waters and substrate necessary to fish for spawning, breeding, feeding, or growth to maturity. If an action would adversely affect EFH, NMFS is required to provide the Federal action agency with EFH conservation recommendations (MSA section 305(b)(4)(A)). This consultation is based, in part, on the information provided by the Federal agency and descriptions of EFH for Pacific coast groundfish, coastal pelagic species, and Pacific salmon contained in the Fishery Management Plans developed by the Pacific Fishery Management Council and approved by the Secretary of Commerce.

The proposed action and action area are described in the BE submitted by the COE. The project area includes habitat which has been designated as EFH for various life stages of 46 species of groundfish, four species of coastal pelagics, and three species of Pacific salmon (Table 1, Enclosure).

EFH Conservation Recommendations: Because the conservation measures that the COE included as part of the proposed action to address ESA concerns are also adequate to avoid, minimize, or otherwise offset potential adverse impacts to the EFH of the species in Table 1, conservation recommendations pursuant to MSA (' 305(b)(4)(A)) are not necessary. Since NMFS is not providing conservation recommendations at this time, no 30-day response from the COE is required (MSA section 305(b)(4)(B)).

This concludes consultation under the MSA. If the proposed action is modified in a manner that may adversely affect EFH, or if new information becomes available that affects the basis for NMFS' EFH conservation recommendations, the COE will need to reinitiate EFH consultation with NMFS in accordance with NMFS implementing regulations for EFH at 50 CFR 600.920(k).

The efforts by the COE and the applicant to design this project to minimize environmental impacts are appreciated. If you have any questions, please contact Shandra O'Haleck, of my staff, at (360) 753-9533 or shandra.o'haleck@noaa.gov.

Sincerely,

A handwritten signature in cursive script, appearing to read "Matt Ingraham", followed by the letters "for".

D. Robert Lohn
Regional Administrator

Enclosure